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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
CONNER DEVELOPMENT COMPANY, INC.,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)
_____)

PCHB No. 80-197

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of two \$250 civil penalties for the alleged violation of respondent's Regulation I, came before the Pollution Control Hearings Board, Nat Washington, Chairman, and David Akana at a formal hearing in Tacoma, on February 5, 1981.

Respondent was represented by its attorney, Keith D. McGoffin; appellant was represented by Garret M. Upper, its employee. Court reporter Betty Koharski recorded the proceedings.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 Appellant Conner Development Company, Inc., is the developer of a
4 20 acre parcel of property located near 132nd Avenue NE and NE 136th
5 Street in Kirkland, King County, Washington. William and Marilyn
6 Conner are the purchasers of the parcel; they are also officers of the
7 appellant company.

8 The Mountain Shop, Inc., is a subcontractor of appellant. Tom
9 Roney is an employee of The Mountain Shop, Inc.

10 II

11 Prior to August 28, 1980, appellant's employees, Mr. Upper and Mr.
12 Conner discussed the disposal of certain materials from building
13 demolition on the site with Mr. Roney, an employee of The Mountain
14 Shop. They agreed to separate the material into what they believed to
15 be burnable and non-burnable piles, ignite the burnables and otherwise
16 dispose of non-burnables.

17 III

18 At about 6:30 a.m. on August 28, 1980, Mr. Roney ignited a 30 foot
19 diameter, 15 feet high pile of materials with diesel fuel. The fire
20 burned without much smoke.

21 At about 8:00 a.m., in response to a complaint, the chief of the
22 King County Fire District No. 36 arrived at the site and saw the pile
23 being burned. He saw natural vegetation in the fire together with
24 building materials, including roofing, plastic, metal, tar paper and
25 painted boards. He asked to see a permit for the fire but none could
26 be produced at the site. Mr. Roney was not cooperative when

1 Section 9.03(b) makes it unlawful for any person to cause or allow
2 the emission of any air contaminant, here smoke, for more than 3
3 minutes in any one hour which is equal to or greater than 20 percent
4 opacity.

5 Section 3.29 provides for a civil penalty of up to \$250 per day
6 for each violation of Regulation I.

7 VII

8 Appellant has had previous notices of violations and civil
9 penalties prior to the instant ones.

10 VII

11 Any Conclusion of Law which should be deemed a Finding of Fact is
12 hereby adopted as such.

13 From these Findings, the Board makes these

14 CONCLUSIONS OF LAW

15 I

16 Appellant violated section 8.02(3) as alleged. The \$250 civil
17 penalty assessed therefor is reasonable in amount and should be
18 affirmed.

19 II

20 Appellant violated section 9.03(b) as alleged. The \$250 civil
21 penalty assessed therefor should be suspended in part because of the
22 circumstances in which the smoke was produced. Appellant is
23 nonetheless responsible for the natural consequences of the
24 extinguishment of an unlawful fire.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 instructed to put the fire out because of the intense heat produced by
2 the fire. Eventually, water was put on the fire and Mr. Roney spread
3 the pile with a loader located at the site.

4 IV

5 At about 11:30 a.m., that day, as a result of two complaints from
6 citizens, respondent's inspector visited the site of the fire. On
7 arriving at the scene, he saw the fire department trucks leaving. He
8 then talked with Mr. Roney and observed the demolished building
9 materials, including tar paper, screens and cardboard in the
10 smoldering spreaded (50 foot diameter, 3 foot high) pile. The
11 inspector took an observation of white smoke rising from the pile and
12 recorded an opacity of 100 percent for ten consecutive minutes. Had
13 the pile been allowed to burn down in a hot fire, the smoke may not
14 have occurred.

15 V

16 For the foregoing occurrences, appellant was sent notices of
17 violation of sections 8.02(3) and 9.03(b) of Regulation I. From these
18 notices followed two \$250 civil penalties (Nos. 4846 and 4847) which
19 were appealed.

20 VI

21 Pursuant to RCW 43.21B.260, respondent has filed with the Board a
22 certified copy of its Regulations I and II which are noticed.

23 Section 8.02(3) makes it unlawful for any person to cause or allow
24 an outdoor fire containing asphalt, petroleum products, paints, rubber
25 products, or plastics, among other things.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

II

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

The two \$250 civil penalties are affirmed, provided however, that \$125 of civil penalty No. 4847 is suspended.

DONE this 17th day of February, 1981.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


DAVID AKANA, Member